

REMARKS/ARGUMENTS

The Office Action mailed October 1, 2002, has been carefully reviewed in light of the Examiner's helpful comments and suggestions.

Submitted herewith for approval by the Examiner is one drawing sheet with Figures 1-5 being designated by the legend "Prior Art."

Claims 1-22 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. By the above amendments, Applicants have specifically addressed those Section 112, second paragraph rejections raised by the Examiner and carefully reviewed all pending claims. Therefore, it is believed that all pending claims are now in compliance with the requirements of Section 112, second paragraph and MPEP 2173.

Claims 1-4 and 18 were rejected under 35 U.S.C. 102(b) as being anticipated by Eguchi. Claims 1 and 3-5 were rejected under 35 U.S.C. 103(a) as being unpatentable over German reference 2234223 in view of Druesne. And claims 5 and 19 were rejected under 35 U.S.C. 103(a) as being unpatentable over Eguchi.

However, claims 6-17 were indicated to be allowable, for which Applicants wish to thank the Examiner for such early indication of allowable subject matter, once they were amended to address those Section 112, second paragraph rejections and were rewritten in independent form. Similarly, method claims 20-22 were indicated to be allowable once amended to overcome those Section 112, second paragraph, rejection. These references have been carefully reviewed with respect to the rejected claims but are not believed to show or suggest Applicants' invention as now claimed in any manner. Reconsideration and allowance of the pending claims is therefore respectfully requested in view of the following

remarks.

Method claim 20 has been amended to overcome the Section 112, second paragraph rejections and is therefore believed to be in condition for allowance.

Claims 21-22 are dependent from claim 20 and are therefore believed to be allowable for the same reasons as claim 20.

As the Examiner is aware, the present invention is directed to an overcapping cover for sparkling wine bottles which are closed with corks having a head fixed to the neck by a tightening wire, and wherein the cover is made from a comparatively thin material. The cover comprises a lower line of weakness and an upper line of weakness wherein the distance L between the lower line of weakness and the upper line of weakness is greater or equal than H, the height between the lower line of weakness and the top of the cover. This creates a tearing strip of sufficient width at the beginning of the tearing so that it breaks easily given the fact that the material of the cover is comparatively thin.

A claim is anticipated only if each and every element is set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *See MPEP 2131*. Moreover, to establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggest by the prior art. *See MPEP 2143.03*. Amended claim 1 now requires an easy-to-open means having an upper line of weakness (43) and a lower line of weakness (44) wherein said lower line of weakness (44) is located on the cover at a height H that defines a partition of the cover with an upper part (10) and lower part (11), the height being such that after the cover and the sealed bottle have been assembled, the lower line of weakness (44) breaks when the cover is first opened and to provide access to the cork once

the upper part (10) has been removed and the lower part (11) remains intact on the neck. The upper line of weakness (43) is separated from the lower line weakness (44) by a distance L at least equal to $0.5 H$, wherein H is the height between the lower line of weakness (44) and the top end of the cover (1), and upper (43) and lower (44) lines of weakness define an opening strip 45 having a width L.

Eguchi does not teach the specific distance between the upper line of weakness and the lower line weakness with respect of the top of the cover, as required by claim 1. Although Eguchi teaches two lines of weakness, the distance between them is not significant, and the inclination expression $(L-Y)/X$ is only related to the slope of the upper line of weakness. Therefore, it is respectfully submitted that claim 1 is not anticipated by prior art.

Moreover, the only reason the Examiner has provided for combining the German reference 2234223 and Druesne references is that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to make the pull strip of the German reference between the two lines of weakness such that there is a distance L there between as taught by Druesne et al. so that the pull strip is larger and located more towards the upper end of the bottle." *Office Action, pages 4-5*. However, the fact that the claimed invention is within the capabilities of the one of ordinary skill in the art is not sufficient by itself to establish a *prima facie* obviousness. *See MPEP 2143.01*. In the present case, clearly the only reasoning the Examiner has provided for combining the references is the reliance on the invention being within the capabilities of one of ordinary skill in the art.

Furthermore, the fact that the prior art structure could be modified does not make such modification obvious in the absence of the prior art suggesting the desirability of doing

so. *See In re Gordon*, 733 F.2d 900, 902, (Fed. Cir. 1984). Here, the Examiner has provided no clue as to where support is found for the reasoning set forth as the suggestion to combine the references, and therefore it stands merely as the Examiner's unsupported opinion. In view of the foregoing, it is respectfully requested that the Section 103 obviousness rejection be withdrawn.

Claims 2-19 are dependent from claim 1 and are therefore allowable for the same reasons as provided in connection with claim 1.

Each issue raised in the Office Action mailed October 1, 2002, has been addressed and it is believed that claims 1-22 are in condition for allowance. Wherefore, Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

1. (Amended) An easy-to-open overcapping cover [1] (1) for a bottle of sparkling wine (2) sealed with a cork (8) having a head (80), a metal cork wire (3) having a tightening wire (30) for fastening the cork to a neck of said bottle removably secured under a glass ring (20) of the neck of said bottle and further including an opening twist or loop (31), [which is typically conical,] comprising:

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a head (5), [and] a skirt (4) of a film or sheet material, [for a recipient or bottle of sparkling wine (2) sealed with a cork (8) with a head (80) with means for fastening the cork to the neck of said recipient, typically a metal cork wire (3) provided with a tightening wire (30) that goes under the glass ring (20) of the neck of said bottle and constitutes an opening twist or loop (31), comprising] an easy-to-open means provided on said skirt and including an upper line of weakness (43) and a lower line of weakness (44) [by two lines of weakness, characterized in that:]

[a] said easy-to-open means comprise at least one so-called line of weakness (44), described as being lower,] wherein said lower line of weakness (44) is located on the cover at a height H that defines a partition of said cover with [a so-called] an upper part (10) and a [so-called] lower part (11), the height being such that after said cover and said [recipient or] sealed bottle have been assembled said lower line of weakness (44) breaks when said [recipient or said bottle] cover is first opened to provide access to said cork [or possibly said cork wire] once said upper part (10) has been removed, said lower part (11) remaining intact on the neck,

[b] a so-called] wherein said upper line of weakness (43) [all or part of which] is separated from the[top of the so-called] lower line weakness (44) by a distance L at least equal to 0.5 H, wherein H [being] is the height between the [so-called] lower line of weakness (44) and the [upper or] top end of said cover (1),

upper (43) and lower (44) lines of weakness defining an opening strip 45 [of] having a width L_1 [the end of which constitutes]

a gripping tab (46) disposed at a free end of said opening strip,

[c] the upper and lower ends of] said gripping tab (46) [are provided with] comprising notches [or recesses] (460, 461) disposed at upper and lower ends thereof and intended to direct the tearing of [tear] said opening strip (45) during said first opening such that when said [recipient or] bottle is opened for said first time said [tear] opening strip (45)[, which is created] by pulling on said gripping tab (46)[, removes the whole of] and removing said upper part (10) along [with it].

2. (Amended) Cover of claim 1, further comprising means for fastening said lower part (11) to said neck, and means for reinforcing said upper part (10) so that when said bottle is opened, said upper part (10) is removed wholly [wherein so-called upper line of weakness (43) constitutes a partial line of weakness (430)].

6. (Twice Amended) Cover of claim 1 wherein said lower part (11, 65) comprises a [so-called] lower reinforcement (67) [reinforcement] means that increases the mechanical properties of [all or part of] said lower part (11) and adheres to [all or part of the] an inner

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surface of said lower part (11, 65) at least along and parallel to said lower line of weakness (44) [and parallel to said lower line of weakness], said lower reinforcement (67) [may also] further comprises [comprise] an adhesive layer over [all or part of the] a surface that can be activated and that is intended to adhere to said neck.

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10. (Twice Amended) Cover of claim 1 wherein said upper part comprises [a so-called] an upper reinforcement means (47) selected, particularly in terms of type and position on the inner surface of said upper part, to increase the mechanical properties of [all or part of] said upper part such that when said [recipient or] bottle is opened for said first time said opening strip (45), which is created by pulling on gripping tab (46), removes the whole of said upper part (10) along with it and to enable said upper line of weakness (43) to be removed by said upper reinforcement means.

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14. (Amended) Cover of claim 13 wherein said reinforcement means (47) comprise an upper part or edge (470) [that may or may not belong to] along the same reinforcement strip [or line], said upper (470) and lower edges (471) being separated by a width L, that is constant or otherwise depending on angular position α , width L ranging typically between 0.4 and 4 cm, average width L being preferably between 0.3 and 0.7 times H, H being the height between the [so-called] lower line and the upper end or top of said cover (1).

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17. (Twice Amended) Cover of claim [6] 10 wherein said upper (47) or lower (67) reinforcement means consist either of a thin sheet or reinforcement strip, typically of a plastic

material (preferably PET or PP), paper, or a layer, strip or line of plastic, resin, varnish or paint material.

18. (Twice Amended) Cover of claim 1 wherein said [material constituting said] cover material is selected from a group consisting of [sheets or strips of] Al, [or] Al alloys, Sn, [or] Sn alloys, shrinkable plastic, Al/PO/Al complex multilayers, Al/PO/paper, PO/Al/PO, and charged PO/Al/PO, [where] wherein Al refers to a layer of aluminum, PO a layer of polyolefin (preferably PE) capable of containing a charge that is typically mineral.

20. (Twice Amended) Method for producing covers (1) of claim 1 [wherein] comprising the steps of:

- cutting out a blank of arc (6) of said skirt [is cut out of] said film or sheet material of height H',
- providing said lower line of weakness (44) and said notches (460, 461) [are provided] on an axial edge (60),
- providing an [said] additional means [are provided,] being selected from [said] an upper line of weakness (43), [said] an upper reinforcement means (47, 48), [said] a lower reinforcement means (67), [said] a means (66) for fastening all or part of lower part (11) to the neck,
- applying a radial line of heat- or pressure-activated adhesive (63) [may be applied, typically] on the other axial edge (61) of said arc, except on the matching part or opposite said tab (46),
- rolling said arc (6) [is rolled] on a chuck by folding axial edge (60) back onto the other axial

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edge (61), applying a line of adhesive [is applied] between the two edges, or activating said pre-applied radial line of adhesive [is activated], to shape said skirt (4) by pressing edges (60, 61) together and possibly creating said grooves (9), and a head (5) is assembled or created[, possibly] by adding a part of the head and fastening it [typically] by thermobonding to upper rim (64) of said skirt that is possibly shrunk and folded.

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21. (Amended) Method of claim 20 [wherein] further comprising the steps of depositing an [the] upper reinforcement or a lower reinforcement [can be deposited] either by bonding a strip [or part of a strip] according to the mechanical characteristics required, which are [typically] resistance to tearing, and of a required shape, which is [typically] part of an annular sector, or by using a gun to apply a strip or line of melted plastic material that is adherent and that hardens when applied.